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HUMAN RIGHTS COMMITTEE
Seventy-second session

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT

Concluding observations of the Human Rights Committee

NETHERLANDS

1. The Committee considered the third periodic report submitted by the Netherlands (CCPR/C/NET/99/3 and Add.1) at its 1928th, 1929th and 1930th meetings, held on 9 and 10 July 2001, and adopted the following concluding observations at its 1943rd and 1947th meetings, held on 19 and 23 July 2001.

A. Introduction

2. The Committee has examined the comprehensive and detailed report of the Netherlands covering events since the submission of its second periodic report in 1988. It regrets the long delay in the submission of the final version of the report. While it appreciates the extensive information provided by the delegation in respect of the European part of the Kingdom, it notes that the delegation was unable to respond to questions raised by Committee members on the human rights situation in the Netherlands Antilles and Aruba. This has unnecessarily complicated the possibility of engaging in a meaningful dialogue on the implementation of the Covenant in these territories. However, the Committee appreciates the timely receipt of the missing responses in writing.

THE EUROPEAN PART OF THE KINGDOM

B. Positive aspects

3. The Committee welcomes the establishment of an independent National Ombudsman, appointed by Parliament, whose authority is constitutionally anchored and whose mandate extends across national, provincial and municipal governments.

4. The Committee also welcomes the establishment of the Equal Treatment Commission, set up by the Equal Treatment Act, as an independent body responsible for investigating and assessing cases of alleged discrimination.

C. Principal subjects of concern and recommendations

5. (a) The Committee discussed the issue of euthanasia and assisted suicide. The Committee acknowledges that the new Act concerning review procedures on the termination of life on request and assisted suicide, which will come into force on 1 January 2002, is the result of extensive public debate addressing a very complex legal and ethical issue. It further recognizes that the new law seeks to provide legal certainty and clarity in a situation which has evolved from case law and medical practice over a number of years. The Committee is well aware that the new Act does not as such decriminalize euthanasia and assisted suicide. However, where a State party seeks to relax legal protection with respect to an act deliberately intended to put an end to human life, the Committee believes that the Covenant obliges it to apply the most rigorous scrutiny to determine whether the State party's obligations to ensure the right to life are being complied with (articles 2 and 6 of the Covenant).

(b) The new Act contains, however, a number of conditions under which the physician is not punishable when he or she terminates the life of a person, inter alia at the "voluntary and well-considered request" of the patient in a situation of "unbearable suffering" offering "no prospect of improvement" and "no other reasonable solution". The Committee is concerned lest such a system may fail to detect and prevent situations where undue pressure could lead to these criteria being circumvented. The Committee is also concerned that, with the passage of time, such a practice may lead to routinization and insensitivity to the strict application of the requirements in a way not anticipated. The Committee learnt with unease that under the present legal system more than 2,000 cases of euthanasia and assisted suicide (or a combination of both) were reported to the review committee in the year 2000 and that the review committee came to a negative assessment only in three cases. The large numbers involved raise doubts whether the present system is only being used in extreme cases in which all the substantive conditions are scrupulously maintained.

(c) The Committee is seriously concerned that the new law is also applicable to minors who have reached the age of 12 years. The Committee notes that the law provides for the consent of parents or guardians of juveniles up to 16 years of age, while for those between 16 and 18 the parents' or guardian's consent may be replaced by the will of the minor, provided that the minor can appropriately assess his or her interests in the matter. The Committee considers it difficult to reconcile a reasoned decision to terminate life with the

evolving and maturing capacities of minors. In view of the irreversibility of euthanasia and assisted suicide, the Committee wishes to underline its conviction that minors are in particular need of protection.

(d) The Committee, having taken full note of the monitoring task of the review committee, is also concerned about the fact that it exercises only an ex post control, not being able to prevent the termination of life when the statutory conditions are not fulfilled.

The State party should re-examine its law on euthanasia and assisted suicide in the light of these observations. It must ensure that the procedures employed offer adequate safeguards against abuse or misuse, including undue influence by third parties. The ex ante control mechanism should be strengthened. The application of the law to minors highlights the serious nature of these concerns. The next report should provide detailed information as to what criteria are applied to determine the existence of a "voluntary and well-considered request", "unbearable suffering" and "no other reasonable alternative". It should further include precise information on the number of cases to which the new Act has been applied and on the relevant reports of the review committee. The State party is asked to keep the law and its application under strict monitoring and continuing observation.

6. The Committee is gravely concerned at reports that new-born handicapped infants have had their lives ended by medical personnel.

The State party should scrupulously investigate any such allegations of violations of the right to life (article 6 of the Covenant), which fall outside the law on euthanasia. The State party should further inform the Committee on the number of such cases and on the results of court proceedings arising out of them.

7. While it acknowledges that the State party's Medical Research (Human Subjects) Act 1999 attempts to find a generally acceptable standard and to establish a permanent control system through the Central Committee for Medical Research Involving Human Subjects and the corresponding local committees accredited by the Central Committee, the Human Rights Committee considers aspects of this law to be problematic (article 7 of the Covenant). It is concerned at the general criterion whereby proportionality is assessed by balancing the risks of the research to the subject against the probable value of the research. The Committee considers that this rather subjective criterion must be qualified by a limitation beyond which the risks are so great to the individual that no measure of expected benefit can outweigh them. The Committee is also concerned that minors and other persons unable to give genuine consent may be subject to medical research under certain circumstances.

The State party should reconsider its Medical Research (Human Subjects) Act in the light of the Committee's concerns, in order to ensure that even high potential value of scientific research is not used to justify severe risks to the subjects of research. The State party should further remove minors and other persons unable to give genuine consent from any medical experiments which do not directly benefit these individuals (non-therapeutic medical research). In its next report, the State party should inform the Committee of the steps taken and provide it with detailed statistics.

8. The Committee remains concerned that, six years after the alleged involvement of members of the State party's peacekeeping forces in the events surrounding the fall of Srebrenica, Bosnia and Herzegovina, in July 1995, the responsibility of the persons concerned has yet to be publicly and finally determined. The Committee considers that in respect of an event of such gravity it is of particular importance that issues relating to the State party's obligation to ensure the right to life be resolved in an expeditious and comprehensive manner (articles 2 and 6 of the Covenant).

The State party should complete its investigations as to the involvement of its armed forces in Srebrenica as soon as possible, publicize these findings widely and examine the conclusions to determine any appropriate criminal or disciplinary action.

9. While welcoming the establishment of a network of advisory centres to deal with child abuse, the Committee is concerned at the continuing high number of reported incidents (articles 7 and 24).

The State party should continue to develop strategies designed to prevent child abuse, and investigate where it has occurred. It should also standardize the systems and measures employed by its advisory centres to facilitate these ends.

10. While welcoming the recent appointment of an independent National Rapporteur on Trafficking in Persons endowed with appropriate investigative and research powers, the Committee remains concerned at continuing reports of sexual exploitation of significant numbers of foreign women in the State party (articles 3, 8 and 26 of the Covenant).

The State party should ensure that the National Rapporteur is equipped with all the means necessary to achieve real and concrete improvement in this area. The State party should inform the Committee of progress made in this respect in the next report.

11. The Committee appreciates the new instructions issued by the Immigration and Naturalization Service aimed at drawing the competent officials' attention to specific aspects of female asylum-seekers' statements peculiar to their gender. However, it remains concerned that a well-founded fear of genital mutilation or other traditional practices in the country of origin that infringe the physical integrity or health of women (article 7 of the Covenant) does not always result in favourable asylum decisions, for example when genital mutilation, despite a nominal legal prohibition, remains an established practice to which the asylum-seeker would be at risk.

The State party should make the necessary legal adjustments to ensure that the female persons concerned enjoy the required protection under article 7 of the Covenant.

12. The Committee is gravely concerned at the scope afforded for the use of anonymous witnesses in the State party's criminal procedure. The Committee notes that use is made of hearing witnesses in the preliminary examination, prior to the trial, without the accused, counsel or the prosecutor being present. The identity is accordingly known only to the examining

magistrate and is subsequently unknown even to the trial judge. While not excluding the use of anonymous witnesses in appropriate instances, the Committee considers that this practice is too broad and that it raises difficulties in terms of article 14 of the Covenant.

The State party should make greater efforts to safeguard the right of a defendant to a fair trial through means which, while protecting witness identity in appropriate and necessary cases, provide a greater opportunity for the evidence to be tested and contested. The State party should also provide further information on how a decision that a witness should be anonymous is reached, and what appeals against or reviews of such a decision are possible. The State party should show why ordinary means of protecting witnesses, such as police security or witness protection and relocation programmes, are considered inadequate in cases where anonymity is allegedly required on account of threats to the witness.

13. The Committee is concerned that the State party's law provides for a maximum of 3 days and 15 hours which may elapse between a suspect's arrest and his or her being brought before a judge. The Committee considers that such a period does not satisfy the requirement in article 9, paragraph 3, of being "promptly" brought before a judicial authority.

The State party should amend this aspect of its criminal procedure to comply with the requirements of the Covenant.

14. The Committee welcomes the State party's recent attempts through legislation and policy to enhance the participation of ethnic minorities in the labour market, including incentives to the private sector to expand the proportion of the workforce made up of ethnic minorities. It notes, however, that these efforts to secure the rights guaranteed under article 27 of the Covenant have yet to show significant results. The Committee is also concerned that children of ethnic minorities are under-represented at higher education levels. The Committee wishes to receive further information concerning the results in practice that the State party's measures in this regard are aimed at achieving.

THE NETHERLANDS ANTILLES

B. Positive aspects

15. The Committee welcomes the comprehensive revision of the Netherlands Antilles Civil Code, removing a large variety of elements discriminating against women. The Committee is also pleased to note the amendments to the Country Ordinances on Income Tax and on Wages and Salaries Tax placing spouses on an equal footing. The Committee notes the establishment of a Prisons Supervisory Board with the power to make binding recommendations on complaints by inmates.

C. Principal subjects of concern and recommendations

16. The Committee is concerned as to the breadth of article 137 of the Constitution, which regulates the imposition of a state of emergency without taking into account the limitation imposed by article 4 of the Covenant for the proclamation of a state of emergency to exceptional circumstances endangering the life of the nation.

> The State party should ensure that its rules on states of emergency are in full conformity with all the requirements of the Covenant.

17. While physical improvements have been made to prison facilities, the Committee remains concerned about unlawful conduct on the part of the staff, combined with their failure to control adequately the behaviour of inmates. These problems threaten the capacity of the competent authorities to administer the penitentiary system properly and to respect the rights of inmates (articles 7 and 10).

> The State party should take the necessary steps to ensure that prison staff act in accordance with the highest professional standards and in a manner that ensures that the rights of all inmates are respected.

18. While welcoming the establishment of the Police Conduct Complaints Committee to receive complaints from members of the public, and the establishment of a committee to monitor the integrity of the police, the Human Rights Committee is concerned that the said authorities do not have the capacity to issue binding determinations. It considers that to act effectively and independently of the executive, of which the police are a part, the authorities should have the competence to issue binding conclusions as to appropriate remedies or disciplinary measures as the case may be.

> The State party should review the limitations on the Authority's powers in the light of the Committee's observations.

19. The Committee is concerned that there is a sizeable backlog in the revision of outdated and obsolete legislation, in particular in the provisions of the Antillean Criminal Code. The Committee considers that, especially in the area of criminal law, legal certainty and clarity are of particular importance in enabling individuals to determine the extent of liability for specific conduct.

> The State party should proceed with the proposed revision of the Criminal Code at the earliest opportunity. In particular, references to the death penalty should be removed.

20. The Committee is equally concerned that the legal rules on the right of peaceful assembly contain a general requirement of prior permission from the local police chief.

> The State party should ensure that the right of peaceful assembly can be exercised by all in strict conformity with the guarantees of article 21 of the Covenant.

21. The Committee notes with regret that the distinctions between legitimate and illegitimate children who have not been recognized by their father, and who accordingly suffer disadvantage under inheritance laws, have not been eliminated.

The State party should remove all distinctions between legitimate and illegitimate children in compliance with articles 24 and 26 of the Covenant.

ARUBA

B. Positive aspects

22. The Committee commends the State party for the introduction of the State Ordinance Administrative Procedure providing a special objection and judicial appeal mechanism against any administrative decision. The Committee also welcomes fundamental safeguards against unlawful actions by the authorities contained in the revised Code of Criminal Procedure (1997), notably the availability of legal assistance beginning with a suspect's initial contact with the criminal justice authorities. It appreciates the establishment of universal jurisdiction for the crime of torture. It further welcomes the increased participation of women in Aruba's political life and in the workforce. It also commends the achievement by women of at least as high an educational level as men.

C. Principal subjects of concern and recommendations

23. The Committee is concerned that domestic workers, who are often particularly vulnerable to exploitation as non-Aruban nationals, should be ensured strengthened protection under Aruba's labour laws in order for the State party to be in compliance with the provisions of article 26 of the Covenant. A formal right to sue for breach of contract may well be insufficient in the specific circumstances of the employer-employee relationship.

The State party should consider the most appropriate way to ensure adequate legal protection for domestic workers, for example by extending the provisions of the Labour Ordinance to cover this class of workers.

24. The Committee is disturbed that the State party has still not put in place an appropriate police complaints authority in Aruba, after the State party admitted that the system established under the Police Complaints Decree did "not function properly in practice" (articles 7 and 26 of the Covenant).

The State party should ensure that the necessary measures are taken to amend and bring into force the revised Decree.

25. The Committee is concerned that despite the equal protection clause of the Aruban Constitution, the Country Ordinance on Admittance and Deportation still legally distinguishes between the legitimate family of a man born in Aruba with Netherlands nationality and the legitimate family of a woman born in Aruba with Netherlands nationality.

Although the provision is said not to be applied in practice, the State party should remove this differentiation, which is in breach of article 26 of the Covenant.

26. The State party should widely publicize the text of its third periodic report, the written answers it has provided in responding to the list of issues drawn up by the Committee and, in particular, these concluding observations.

27. The State party is asked, pursuant to rule 70, paragraph 5, of the Committee's rules of procedure, to forward information within 12 months on the implementation of the Committee's recommendations regarding the State party's law on euthanasia (para. 5), the situation on post-natal infanticide (para. 6), the investigation of events surrounding the fall of Srebrenica (para. 7), as well as, for the Netherlands Antilles, the difficulties concerning its prison system (para. 17), and, for Aruba, the implementation of a functioning police complaints authority (para. 24). The Committee requests that information concerning the remainder of its recommendations be included in the fourth periodic report to be presented by 1 August 2006.